IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 160/2003

MUNICIPAL COUNCIL, SIKAR Vs. MAJID

DATE: 15.03.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. K.N. Gupta for the petitioner.

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The case is called in second round. None appeared on behalf of the respondent despite service.

The present criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the petitioner against the judgment dated 28.10.2002 passed by the Additional Chief Judicial Magistrate, Sikar in Criminal Case No. 188/99 with regard to offence under Sections 170, 173-A, 194 and 251 of the Rajasthan Municipalities Act, 1959.

Learned counsel for the petitioner challenged the impugned judgment to the extent that the Court below has observed that encroachment is made by the respondent and he constructed shops and also constructed projection and it was ordered that the shops which are constructed contrary to the provisions of law along with projection shall not be demolished

and the Municipal Council is entitled to levy fine and regularise the unauthorised construction raised by the respondent.

He referred sub-section (11) of Section 170 of the Rajasthan Municipalities Act, 1959 which reads as under:-

> **170. Provisions relating to erection of buildings.**
>
> **(1).....**
>
> **(11).** whoever begins, continues or completes the erection or re-erection of or any material alteration in, a buildings or a part of buildings or the erection or re-erection of any projecting portion of a building in respect of which the board is empowered by Section 166 to enforce a removal or set-back or the construction or enlargement of a well without giving the notice required by sub-section (1) or in contravention of any provision of this section or of an order of the board made under sub-section (6) or sub-section (7) shall be liable on conviction to a fine which may extend to two hundred rupees and the board may at any time by written notice-
>
> (a) direct the owner or occupier to stop the erection, re-erection or alteration of a building or any projecting portion thereof, or of any part of such building or projecting portion or the construction or enlargement of a well, and
>
> (b) require such building, projecting portion, alteration or well to be demolished.

He further referred Section 194 of the Rajasthan Municipalities Act, 1959 which reads as under:-

> **194. Permission necessary for certain projections.-**
>
> (1) The Board may give written permission to the owners or occupiers of building in public streets to put up open verandas, balconies or rooms to project from any upper storey thereof, at such height from the surface of the street as the board may fix by bye-laws from time to time and to an extent not exceeding four feet beyond the line of the plinth or basement wall, and may prescribe the extent to which and the conditions under which roofs, caves, water boards, shop-boards and the like may be allowed to project over such streets.
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> (2) Any such owner or occupier putting up any such projection as aforesaid without such permission or in contravention of such orders shall be punished with fine which may extend to twenty-five rupees and, if any such owner or occupier fails to remove any such projection as aforesaid in respect of which he has been convicted under this section, he shall be punished with further fine which may extend to five rupees for each day on which such failure or neglect continues.
>
> (3) The board may, by written notice require the owner or occupier of any building to remove or alter any projection, encroachment or obstruction which, whether erected before or after the site of such

> building became part of a municipality, shall have been erected or placed against or in front of such building, and which–
>
> (a) overhangs or just into or in any way projects or encroaches upon any public street so as to be an obstruction to safe and convenient passage along such street, or
>
> (b) projects and encroaches into or upon any uncovered aqueduct, drain, or sewer in such street so as to obstruct or interfere with such aqueduct, drain or sewer or the proper working thereof:
>
> Provided always that the board shall, if such projection, encroachment or obstruction shall have been made in any place before the date on which such place became part of a municipality or after such date with the written permission of the board, make reasonable compensation to every person who suffers damage by such removal or alteration and, if any dispute shall arise touching the amount of such compensation, the same shall be ascertained and determined in the manner provided in section 262."

As per the provisions order of regularisation can only be made if the provisions of the Rajasthan Municipalities Act, 1959 permits and to that extent the Municipal Council is at liberty to examine the case of the respondent whether it is a fit case as directed by the Court below for regularisation after awarding fine or not, and if it is contrary to law the Municipal

Council is at liberty to proceed further in accordance with law.

With these observations, the impugned judgment dated 28.10.2002 passed by the Additional Chief Judicial Magistrate, Sikar is modified as indicated herein above and the revision petition stands disposed of.

(K.S. RATHORE),J.

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